

(2) *Policy periods beginning in Program Year 3.* If an insurer must make available coverage for insured losses as required by paragraph (c)(1) of this section for a policy whose coverage period began in Program Year 3 but extends into Program Year 4, then the insurer must be able to demonstrate to Treasury's satisfaction that it has offered such coverage by January 1, 2006, or as soon as possible following that date.

(3) *Coverage becoming effective in Program Year 4.* If an insurer processed a new policy or policy renewal in Program Year 3 for coverage becoming effective in Program Year 4, but did not make available coverage for insured losses as required by § 50.20 by January 1, 2006, then the insurer must be able to demonstrate to Treasury's satisfaction that it has provided an offer of coverage for insured losses as soon as possible following that date.

(4) *Coverage expired as of December 31, 2007.* If an insurer must make available coverage for insured losses under the circumstances described in paragraph (c)(2) of this section, the insurer must be able to demonstrate to Treasury's satisfaction that it has offered such coverage as soon as possible following January 1, 2008.

(5) *Coverage becoming effective in 2008.*
(i) *No coverage.* If an insurer processed a new policy or policy renewal in 2007 or in the first three months of 2008 for coverage becoming effective in 2008, but did not make available coverage for insured losses as required by § 50.20(a), then the insurer must be able to demonstrate to Treasury's satisfaction that it has provided an offer of coverage for insured losses as soon as possible following January 1, 2008.

(ii) *Not consistent with amended definition of act of terrorism.* If an insurer made an initial offer of coverage or offer of renewal on or after December 26, 2007 for a policy term becoming effective in 2008, and made available coverage for insured losses, but the scope of the coverage for insured losses in the offer was not consistent with the definition of an act of terrorism as amended by the Terrorism Risk Insurance Program Reauthorization Act of 2007, then the insurer must be able to demonstrate to Treasury's satisfaction that it has provided a new offer of cov-

erage as soon as possible following January 1, 2008. If an insurer made an initial offer of coverage or offer of renewal before December 26, 2007, for a policy term becoming effective in 2008, and the insurer made available coverage for insured losses in compliance with the Act and the definition of an act of terrorism in effect at the time of the offer, then the insurer is not required to make a new offer of coverage before the policy is due to be renewed by its terms, regardless of whether the offer was accepted or rejected.

[73 FR 53364, Sept. 16, 2008]

§ 50.23 No material difference from other coverage.

(a) *Terms, amounts, and other coverage limitations.* As provided in § 50.20(a)(2), an insurer must offer coverage for insured losses resulting from an act of terrorism that does not differ materially from the terms, amounts, and other coverage limitations (including deductibles) applicable to losses from other perils. For purposes of this requirement, "terms" excludes price.

(b) *Limitations on types of risk.* If an insurer does not cover all types of risks, then it is not required to cover the excluded risks in satisfying the requirement to make available coverage for losses resulting from an act of terrorism that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism. For example, if an insurer does not cover all types of risks, either because the insurer is outside of direct State regulatory oversight, or because a State permits certain exclusions for certain types of losses, such as nuclear, biological, or chemical events, then the insurer is not required to make such coverage available.

§ 50.24 Applicability of State law requirements.

(a) *General.* After satisfying the requirement to make available coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism, if coverage is

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rejected an insurer may then offer coverage that is on different terms, amounts, or coverage limitations, as long as such an offer does not violate any applicable State law requirements.

(b) *Examples.* (1) If an insurer subject to State regulation first makes available coverage in accordance with § 50.20 and the State has a requirement that an insurer offer full coverage without any exclusion, then the requirement would continue to apply and the insurer may not subsequently offer less than full coverage or coverage with exclusions.

(2) If an insurer subject to State regulation first makes available coverage in accordance with § 50.20 and the State permits certain exclusions or allows for other limitations, or an insurance policy is not governed by State law requirements, then the insurer may subsequently offer limited coverage or coverage with exclusions.

Subpart D—State Residual Market Insurance Entities; Workers' Compensation Funds

§ 50.30 General participation requirements.

(a) *Insurers.* As defined in § 50.5(f), all State residual market insurance entities and State workers' compensation funds are insurers under the Program even if such entities do not receive direct earned premiums.

(b) *Mandatory Participation.* State residual market insurance entities and State workers' compensation funds that meet the requirements of § 50.5(f) are mandatory participants in the Program subject to the rules issued in this Subpart.

(c) *Identification.* Treasury will release and maintain a list of State residual market insurance entities and State workers' compensation funds at www.treasury.gov/trip. Procedures for providing comments and updates to that list will be posted with the list.

[68 FR 59720, Oct. 17, 2003]

§ 50.33 Entities that do not share profits and losses with private sector insurers.

(a) *Treatment.* A State residual market insurance entity or a State work-

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ers' compensation fund that does not share profits and losses with a private sector insurer is deemed to be a separate insurer under the Program.

(b) *Premium calculation.* A State residual market insurance entity or a State workers' compensation fund that is deemed to be a separate insurer should follow the guidelines specified in § 50.5(d)(1) or 50.5(d)(2) for the purposes of calculating the appropriate measure of direct earned premium.

[68 FR 59720, Oct. 17, 2003]

§ 50.35 Entities that share profits and losses with private sector insurers.

(a) *Treatment.* A State residual market insurance entity or a State workers' compensation fund that shares profits and losses with a private sector insurer is not deemed to be a separate insurer under the Program.

(b) *Premium and loss calculation.* A State residual market insurance entity or a State workers' compensation fund that is not deemed to be a separate insurer should continue to report, in accordance with normal business practices, to each participant insurer its share of premium income and insured losses, which shall then be included respectively in the participant insurer's direct earned premium or insured loss calculations.

[68 FR 59720, Oct. 17, 2003]

§ 50.36 Allocation of premium income associated with entities that do share profits and losses with private sector insurers.

(a) *Servicing Carriers.* For purposes of this Subpart, a servicing carrier is an insurer that enters into an agreement to place and service insurance contracts for a State residual market insurance entity or a State workers' compensation fund and to cede premiums associated with such insurance contracts to the State residual market insurance entity or State workers' compensation fund. Premiums written by a servicing carrier on behalf of a State residual market insurance entity or State workers' compensation fund that are ceded to such an entity or fund shall not be included as direct earned premium (as described in § 50.5(d)(1) or 50.5(d)(2)) of the servicing carrier.